

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MARGARET KENNEDY, et al.,
Plaintiffs,

v.

ABB INC., et al.,
Defendants.

**CIVIL ACTION
NO. 06-cv-04305**

**(JUDGE NANETTE K. LAUGHREY)
JURY TRIAL DEMANDED**

ABB DEFENDANTS' MOTION TO DISMISS

Defendants ABB Inc., John W. Cutler, Jr., the Pension Review Committee of ABB Inc., the Pension & Thrift Management Group of ABB Inc., and the Employee Benefits Committee of ABB Inc. (collectively, "ABB"), by counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby move the Court to dismiss this action against them. As set forth in the accompanying Suggestions of Law in support of ABB Defendants' Motion, immediate dismissal of this lawsuit is warranted pursuant to 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that Plaintiffs do not, and indeed cannot, allege that the fees and expenses charged to ABB's 401(k) retirement savings Plans were inadequately disclosed to the Plaintiffs and the Plans' participants. The failure in pleading, in turn, requires dismissal of the entirety of the lawsuit under ERISA section 404(c), 29 U.S.C. § 1104(c).

Respectfully submitted,

/s/ Jeffrey S. Russell

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Dated: March 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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